

**PT 99-6**

**Tax: PROPERTY TAX**

**Issue: Charitable Ownership/Use**

**STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
SPRINGFIELD, ILLINOIS**

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<b>BROOKPORT SENIOR CITIZENS</b>	)	<b>Docket #</b>	<b>96-64-16</b>
<b>Applicant</b>	)		
	)		
<b>v.</b>	)		
	)	<b>Parcel Index #</b>	<b>09-14-203-001-0040</b>
<b>THE DEPARTMENT OF REVENUE</b>	)		
<b>OF THE STATE OF ILLINOIS</b>	)		

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**RECOMMENDATION FOR DISPOSITION**

**Synopsis:**

The hearing in this matter was held on June 2, 1998, at 2309 West Main Street, Marion, Illinois, to determine whether or not Massac County Parcel Index No. 09-14-203-001-0040 qualified for exemption from real estate taxation for the 1996 assessment year.

Mr. William Eutsler, vice president of the Brookport Senior Citizens; (hereinafter referred to as the "Senior Citizens") Mrs. Dorothy Eutsler, treasurer of the senior citizens; and Mr. Bill Blackman of the Illinois Coalition for Community Services were present and testified on behalf of the senior citizens.

Ms. Tammy Wahaib, clerk of the Massac County Board of Review, was present on behalf of the Board.

The issues in this matter include, first, whether the senior citizens was the owner of this parcel during the 1996 assessment year; secondly, whether the senior citizens is a charitable

organization; and lastly, whether the senior citizens used this parcel for charitable purposes during the 1996 assessment year. Following the submission of all of the evidence and a review of the record, it is determined that the senior citizens did not own this parcel for real estate tax purposes during the 1996 assessment year. It is also determined that the senior citizens is not a charitable organization. Finally, it is determined that the senior citizens did not use this parcel for primarily charitable purposes during the 1996 assessment year. It is therefore recommended that this parcel remain on the tax rolls for the 1996 assessment year and be assessed to the senior citizens.

Findings of Fact:

1. The position of the Illinois Department of Revenue (hereinafter referred to as the “Department”) in this matter, namely that this parcel and the building thereon did not qualify for exemption during the 1996 assessment year was established by the admission in evidence of Department’s Exhibits 1 through 6A.

2. On October 15, 1996, the Massac County Board of Review transmitted to the Department an Application for Property Tax Exemption To Board of Review concerning the parcel here in issue and the residence thereon for the 1996 assessment year. ( Dept. Ex. No. 2)

3. On March 20, 1997, the Department advised the applicant that it was denying the exemption of this parcel and the building thereon for the reason that it was not in exempt ownership and not in exempt use. (Dept. Ex. No. 3)

4. By a letter dated March 25, 1997, Mr. Bill Eutsler, vice president of senior citizens, requested a formal hearing in this matter. (Dept. Ex. No. 4)

5. The hearing in this matter conducted on June 2, 1998, was held pursuant to that request. (Dept. Ex. No. 5)

6. At the pre-trial conference in this matter, the Administrative Law Judge advised the senior citizens that it would be appropriate for the senior citizens to be represented by legal

counsel at the hearing. Mr. Eutsler, at the hearing, indicated that the senior citizens wished to proceed without legal counsel. (Tr. p. 8)

7. By a Warranty Deed dated June 28, 1985, the Lester Reynolds Chapter, American Legion Post No. 523 (hereinafter referred to as the “American Legion”) conveyed this parcel and the building thereon to the Brookport Senior Citizens Center. The consideration stated in that deed was \$601.00 (Dept. Ex. No. 2A)

8. The resolution authorizing the sale of the Lester Reynolds Chapter, American Legion Post No. 523 hall to the Brookport Senior Citizens Center, also dated June 28, 1985, contains the following provisions: the American Legion sign will remain in front of the building; the American Legion will have use of the hall one or more nights a month as is necessary; and the American Legion will have first chance to repurchase the property for the consideration stated in the Warranty Deed. (Dept. Ex. No. 2B)

9. During 1996, the sign on the building over the front door read as follows: “Senior Citizens American Legion Post 523” (Dept. Ex. No. 2C)

10. During 1996, the American Legion used approximately the western one-half of the one-story building on this parcel for its office and meeting place. The American Legion has records, files, flags, banners, furniture, and archival material stored in the western one-half of the building on this parcel. (Tr. pp. 20-22, Appl. Ex. No. 11, Dept. Ex. Nos. 2D&2E)

11. The American Legion held its regularly scheduled meetings in this building on the first Monday of each month. In addition to the regular meetings, the American Legion used this building for special assemblies and practice and rehearsals for special programs. (Appl. Ex. No. 11)

12. The senior citizens were incorporated on March 29, 1985, pursuant to the “General Not For Profit Corporation Act” of Illinois, for purposes which included the following:

- (a) The specific and primary purpose for which this corporation is organized is to provide social and recreational facilities for its members.

(b) The general purposes for which this corporation is formed are: to promote social intercourse among senior citizens of Brookport, Illinois, and to purchase, repair, improve, maintain and operate a building for the benefit of its members.

(c) This corporation is organized and operated exclusively for pleasure, recreation, and other non-profit purposes, and no part of any net earnings shall inure to the benefit of any member director, or officer. (Appl. Ex. No. 5)

13. On October 2, 1985, senior citizens amended the purpose clause of its articles of incorporation as follows:

The Brookport Senior Citizens is organized exclusively for charitable, educational, religious, or scientific purposes within the meaning of Section 501 (c) (3) of the Internal Revenue Code. (Appl. Ex. No. 7)

14. During 1996, the senior citizens met in the eastern one-half of the building on this parcel on the second and fourth Tuesdays of each month for a potluck, an auction of donated goods, and other social activities. Persons who donated food each put in a dollar. If a person did not bring food they donated \$1.75. These cash donations and the money from the auctions went to help pay the building operating expenses. If a member was unable to attend a potluck, someone would take a plate of food to his or her home. (Tr. pp. 13-15)

15. During 1996, several groups used the building. The American Legion used the building as hereinbefore described and paid nothing to the senior citizens. A Methodist Church used the building for an activity which was not described and paid \$10.00 to the senior citizens. Jennifer Henderson had a baby shower at the building and paid \$20.00 to the senior citizens for the use of the building. Also, during 1996 the Eddington family had a family reunion at the building and paid \$20.00 to the senior citizens. (Appl. Ex. No. 4)

#### Conclusions of Law:

Article IX, Section 6, of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural

societies, and for school, religious, cemetery and charitable purposes.

This provision is not self-executing but merely authorizes the General Assembly to enact legislation that exempts property within the constitutional limitations imposed. City of Chicago v. Illinois Department of Revenue, 147 Ill.2d 484 (1992).

The Property Tax Code at 35 **ILCS** 200/15-65 provides in part as follows:

All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:  
(a) institutions of public charity;  
(b) beneficent and charitable organizations incorporated in any state of the United States....

It should be pointed out that to qualify for an exemption from taxation as a charity, the senior citizens must demonstrate that there is ownership by a charitable organization and use for charitable purposes. Fairview Haven v. Department of Revenue, 153 Ill. App. 3d 763 (4<sup>th</sup> Dist. 1987); and Christian Action Ministry v. Department of Local Government Affairs, 74 Ill.2d 51 (1978).

In the case of Southern Illinois University Foundation v. Booker, 98 Ill.App.3d 1062 (5<sup>th</sup> Dist. 1981), the Court held that the elements of ownership for real estate tax purposes are control of the property, and the right to its benefits. In this case, pursuant to the resolution at the time of the conveyance of this parcel the American Legion retained the right and did maintain a sign on the front of the hall, as well as using the building for meetings at no cost one or more nights a month, storing furniture, equipment, and records in the building at no cost, and having the first right of repurchase for \$601.00. I therefore conclude that since the senior citizens did not have exclusive possession of this parcel free from any equitable interest in the American Legion, that this parcel was not owned for real estate tax exemption purposes by the senior citizens.

The original Articles of Incorporation of the senior citizens clearly indicated that the senior citizens were organized for social purposes. While the Articles were later amended to include charitable, educational, and scientific purposes, during 1996 the senior citizens were still

using the property twice a month for potlucks and rummage auctions. These activities allowed the senior citizens the opportunity to get together socially and share a meal, and certainly were not charitable activities.

The other activities held at the building on this parcel during the 1996 assessment year, namely the baby shower and the family reunion, were like the senior citizens potlucks, also social activities.

The senior citizens failed to present sufficient evidence that the American Legion's use of this parcel was charitable.

It is well settled in Illinois that when a statute purports to grant an exemption from taxation, the fundamental rule of construction is that a tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956); Milward v. Paschen, 16 Ill.2d 302 (1959); and Cook County Collector v. National College of Education, 41 Ill.App.3d 633 (1st Dist. 1976). Whenever doubt arises, it is to be resolved against exemption, and in favor of taxation. People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1944) and People ex rel. Lloyd v. University of Illinois, 357 Ill. 369 (1934). Finally, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967); Girl Scouts of DuPage County Council, Inc. v. Department of Revenue, 189 Ill.App.3d 858 (2nd Dist. 1989) and Board of Certified Safety Professionals v. Johnson, 112 Ill.2d 542 (1986).

To qualify for exemption pursuant to statute, it is clear that the senior citizens had the burden of proving that during 1996 they owned this parcel and the building thereon, that they were a charitable organization, and that they used this parcel for charitable purposes. The senior citizens failed to establish that they met any of the foregoing three required criteria.

I therefore recommend that Massac County Parcel Index No. 09-14-203-001-0040 remain on the tax rolls for the 1996 assessment year and be assessed to the Brookport Senior Citizens.

Respectfully Submitted,

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George H. Nafziger  
Administrative Law Judge  
January 26, 1999